

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 10 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IRWIN JACOBOWITZ; et al.,

No. 22-55769

Plaintiffs-Appellants,

D.C. No. 2:22-cv-04038-DSF-KS

v.

MEMORANDUM*

RICK HAWTHORNE; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Irwin, Pearl, Dakota, Arizona, and Montana Jacobowitzes’s (“plaintiffs”) motion to proceed in forma pauperis (“IFP”) on appeal (Docket Entry No. 3) is granted.

Plaintiffs appeal pro se from the district court’s order denying plaintiffs’

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

requests to proceed IFP and dismissing for lack of subject matter jurisdiction plaintiffs' action alleging various claims arising out of their eviction from a rental property. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of an IFP request. *Rodriguez v. Steck*, 795 F.3d 1187, 1188 (9th Cir. 2015) (order). We vacate and remand.

The district court denied plaintiffs' requests to proceed IFP and dismissed the action without leave to amend because plaintiffs failed to allege any violation of federal law or diversity of citizenship. However, the district court did not determine that amendment would be futile. We vacate and remand for the district court to allow plaintiffs the opportunity to file an amended complaint. *See id.* at 1188 (plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is absolutely clear from the face of the complaint that the deficiencies could not be cured by amendment).

Plaintiffs' motion to amend the opening brief (Docket Entry No. 8) is granted. The Clerk will strike the opening brief filed at Docket Entry No. 6 and file the amended opening brief received at Docket Entry No. 7.

All other pending motions and requests are denied.

VACATED and REMANDED.